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3 SOPHIA E. C. SCHWARTZ, BAR NO. 272915
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5 1999 Harrison Street, 25th Floor
Oakland, California 94612-3520
6 P.O. Box 12979
Oakland, California 94604-2979
7 Telephone: (510) 451-0544
Facsimile: (510) 832-1486

8
9 Attorneys for Defendants
TRIBAIR, INC. and ERIC REIHER

10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13 ICALL, INC.,

14 Plaintiff,

15 v.

16 TRIBAIR, INC., ERIC REIHER and
17 DOES 1-5,

18 Defendants.

19 AND RELATED COUNTERCLAIM.
20

Case No. CV 12 2406

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: November 15, 2012
Time: 1:30 p.m.
Ct rm: 5, 17th Floor
Judge: Hon. Edward M. Chen

Defendants Tribair, Inc. and Eric Reiher hereby request the Court to take judicial notice pursuant to Federal Rule of Evidence 201 of the facts listed below. *Metro Pub. v. San Jose Mercury News*, 987 F.2d 637, 641 n.3 (9th Cir. 1993) (a court may take judicial notice of certified copies of trademark registrations from the principal register); *Denius v. Dunlap*, 330 F.3d 919, 926 (7th Cir. 2003) (a court may take judicial notice of information on a government agency's website). A court may take judicial notice of "matters of public record." *Mack v. South Bay Beer Distributors, Inc.*, 798 F. 2d 1279 (9th Cir. 1986). Finally, courts may take judicial notice of facts not subject to reasonable dispute because they "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Ev. 201(b).

(1) Application for Trademark Assignment, recorded February 12, 2000 by the United States Patent and Trademark Office, a true and correct copy of which is attached hereto as **Exhibit A**;

(2) Application for Trademark Assignment, recorded February 23, 2000 by the United States Patent and Trademark Office, a true and correct copy of which is attached hereto as **Exhibit B**;

(3) Application for Trademark Assignment, recorded August 27, 2004 by the United States Patent and Trademark Office, a true and correct copy of which is attached hereto as **Exhibit C**;

(4) Application for Trademark Assignment, received August 27, 2004 by the United States Patent and Trademark Office, a true and correct copy of which is attached hereto as **Exhibit D**;

(5) Application for Trademark Assignment, received March 7, 2008 by the United States Patent and Trademark Office, a true and correct copy of which is attached hereto as **Exhibit E**;

(6) Submission of documentation for Trademark Assignment, executed November 24, 2009 by John Mackel and received by the United States Patent and Trademark Office, a true and correct copy of which is attached hereto as **Exhibit F**;

(7) Order Denying Defendants' Motion to Transfer; Granting in Part and Denying in

1 Part Defendants' Motion to Dismiss; Denying Plaintiff's Motion for Preliminary Injunction, *iCall*,
2 *Inc. v. Reliance Communications Ltd., et al.*, Case No. C 10-02206JW, United States District
3 Court for the Northern District of California, September 16, 2010, a true and correct copy of
4 which is attached hereto as **Exhibit G**.

5 (8) Website of Apple, Inc.'s legal department,
6 <http://apple.com/legal/trademark/appletmlist.html>, listing its current trademarks, including
7 iBook, iBook, iCal, iChat, iDVD, iFrame Logo, iLife, iMac, iMessage, iMovie, iPad, iPhone,
8 iPhoto, iPod, iPod classic, iPod Hi-Fi, iPod nano, iPod shuffle, iPod Socks, iPod touch, iSight,
9 iTunes, iTunes Logo, iTunes Pass, iTunes U, iWeb, and iWork. Apple Legal, iAd, iBookstore,
10 iCloud, iDisk, iMix, iTunes Store, a true and correct copy of the website is attached hereto as
11 **Exhibit H**.

12
13 Dated: October 26, 2012

DONAHUE GALLAGHER WOODS LLP


14
15 By: 

16 John C. Kirke
17 Attorneys for Defendants
18 TRIBAIR, INC. AND ERIC REIHER
19
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26
27
28

EXHIBIT A

Trademark Assignment Details

Reel/Frame: 2037 / 0285

[View Recorded Assignment](#) 

Pages: 4

Received: 03/22/2000

Recorded: 02/12/2000

Conveyance: ASSIGNS THE ENTIRE INTEREST

Total properties: 1

1 Serial #: 75098581

Filing Dt: 05/03/1996

Reg #: 2194066

Reg. Dt: 10/06/1998

Mark: ICALL

Assignor

1 WYATT WILLIAMS AND JOEL LIBOVE PARTNERSHIP, THE, D/B/A ICALL

Exec Dt: 01/20/2000

Entity Type: GENERAL PARTNERSHIP

Citizenship: SOUTH CAROLINA

Assignee

1 JOHN DAHL

P.O. BOX 10058

NEWPORT BEACH, CALIFORNIA 92658

Entity Type: INDIVIDUAL

Citizenship: CALIFORNIA

Correspondence name and address

MALCOLM B. WITTENBERG

P.O. BOX 7936

FOUR EMBARCADERO CENTER, SUITE 1900

SAN FRANCISCO, CA 94120-7936

Search Results as of: 09/16/2010 02:17 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.
Web interface last modified: October 16, 2008 v.2.0.1

02-12-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #67

03-22-2000

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

101292375

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New

☐ Resubmission (Non-Recordation)
Document ID#

☐ Correction of PTO Error
Reel # Frame #

☐ Corrective Document
Reel # Frame #

Conveyance Type

☒ Assignment ☐ License

☐ Security Agreement ☐ Nunc Pro Tunc Assignment

☐ Merger

☐ Change of Name
Effective Date
Month Day Year
 01/20/00

☐ Other 23497.00010

Conveying Party☐ Mark if additional names of conveying parties attachedName The Wyatt Williams and Joel Libove Partnership, D/B/A ICALLExecution Date
Month Day YearFormerly 01/20/00

☐ Individual ☒ General Partnership ☐ Limited Partnership ☐ Corporation ☐ Association

☐ Other

☐ Citizenship/State of Incorporation/Organization South Carolina

Receiving Party☐ Mark if additional names of receiving parties attachedName John DahlDBA/AKA/TA Address (line 1) P.O. Box 10058Address (line 2) Address (line 3) Newport Beach California 92658

City

State/Country

Zip Code

☒ Individual ☐ General Partnership ☐ Limited Partnership ☐

☐ Corporation ☐ Association

☐ Other

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

☐ Citizenship/State of Incorporation/Organization California

03/20/2000 DWGUYEN 00000129 033821 2194066

FOR OFFICE USE ONLY

01 FC=481

40.00 CH

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20503

TRADEMARK

FORM PTO-1618B

Expires 06/30/99
OMB 0851-0027

Page 2

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name Malcolm B. WittenbergAddress (line 1) Crosby, Heafey, Roach & MayAddress (line 2) P.O. Box 7936Address (line 3) Four Embarcadero Center, Suite 1900Address (line 4) San Francisco, CA 94120-7936**Correspondent Name and Address**Area Code and Telephone Number 415 543-8700Name Malcolm B. WittenbergAddress (line 1) P.O. Box 7936Address (line 2) Four Embarcadero Center, Suite 1900Address (line 3) San Francisco, CA 94120-7936Address (line 4) **Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

2**Trademark Application Number(s) or Registration Number(s)**☐ Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)**Registration Number(s)**

| | | | | | |
|---------|---------|---------|------------------|---------|---------|
| <u></u> | <u></u> | <u></u> | <u>2,194,066</u> | <u></u> | <u></u> |
| <u></u> | <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |
| <u></u> | <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |

Number of Properties

Enter the total number or properties involved.

1**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

40.00

Method of Payment:

Deposit Account

Enclosed ☐Deposit Account ☒

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

03-3821

Authorization to charge additional fees:

Yes ☒No ☐**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Malcolm B. Wittenberg

Name of Person Signing

Malcolm B. Wittenberg
Signature2/10/00
Date

TRADEMARK ASSIGNMENT

This Agreement is entered into by John Dahl (Assignee), with a principal place of business at P.O. Box 10058, Newport Beach, California 92658 and The Wyatt Williams and Joel Libove Partnership, D/B/A ICall, a South Carolina Partnership, (Assignor), with its principal place of business at 15005 Beacon Ridge, # 200, Seneca, South Carolina 29678.

For good and valuable consideration, The Wyatt Williams and Joel Libove Partnership, D/B/A ICall, does hereby assign to John Dahl any and all of its right, title, obligation and interest in U.S. Trademark Registration No. 2,194,066.

By: *Wyatt Williams* *Joel Libove*
The Wyatt Williams and Joel Libove Partnership
d/b/a ICall, a South Carolina Partnership

Title: General Manager

Date: 20 Jan 00 Jan 20, 2000

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On _____, 2000, before me, _____, personally appeared _____, ~ personally known to me - OR - ~ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

(SIGNATURE OF NOTARY)

ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of CONTRA COSTA } ss.On JANUARY 20, 2000 before me, A. HARDSTONEpersonally appeared JOEL LIBOVE and CHARLES WYATT WILLIAMS
(DATE) (SIGNER(S)) (NOTARY)☐ personally known to me

- OR -

☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**DESCRIPTION OF ATTACHED DOCUMENT**

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

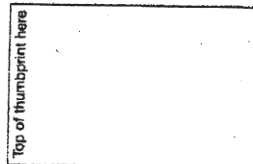

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)RIGHT THUMBPRINT
OF
SIGNER

EXHIBIT B

Trademark Assignment Details

Reel/Frame: 2059 / 0901

[View Recorded Assignment](#) 

Pages: 3

Received: 04/26/2000

Recorded: 02/23/2000

Conveyance: ASSIGNMENT: EFFECTIVE 01-31-2000

Total properties: 1

1 Serial #: 75098581
Mark: ICALL

Filing Dt: 05/03/1996

Reg #: 2194066

Reg. Dt: 10/06/1998

Assignor

1 DAHL, JOHN

Exec Dt: 01/31/2000

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Assignee

1 ICALL, INC.

ONE WILSHIRE BLDG.

624 SOUTH GRAND AVENUE, SUITE 2900

LOS ANGELES, CALIFORNIA 90017

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Correspondence name and address

CROSBY, HEAFEY, ROACH & MAY

MALCOLM B. WITTENBERG

P.O. BOX 7936

FOUR EMBARCADERO CENTER, SUITE 1900

SAN FRANCISCO, CA 94120-7936

Search Results as of: 09/16/2010 02:17 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.
Web interface last modified: October 18, 2008 v.2.0.1

FORM PTO-1618A
Expires 08/30/99
OMB 0651-0027

04-26-2000



101334294

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- ☒ New
- ☐ Resubmission (Non-Recordation)
Document ID# _____
- ☐ Correction of PTO Error
Reel # _____ Frame # _____
- ☐ Corrective Document
Reel # _____ Frame # _____

Conveyance Type

- ☒ Assignment ☐ License **And**
- ☐ Security Agreement ☐ Nunc Pro Tunc Assignment **2.23.00**
- ☐ Merger
- ☐ Change of Name **Effective Date**
Month Day Year
01/31/00
- ☐ Other **23497.00010**

Conveying Party

☐ Mark if additional names of conveying parties attached

Name **John Dahl**

Execution Date
Month Day Year

Formerly _____

01/31/0

- ☒ Individual ☐ General Partnership ☐ Limited Partnership ☐ Corporation ☐ Association
- ☐ Other _____
- ☐ Citizenship/State of Incorporation/Organization **U.S.**

Receiving Party

☐ Mark if additional names of receiving parties attached

Name **iCall, Inc.**

DBA/AKA/TA _____

Address (line 1) **One Wilshire Bldg.**

Address (line 2) **624 South Grand Avenue, Suite 2900**

Address (line 3) **Los Angeles,**

California

90017

City

State/Country

Zip Code

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☐
- ☒ Corporation ☐ Association
- ☐ Other _____
- ☐ Citizenship/State of Incorporation/Organization **California**

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

FORM PTO-1618B
Expires 06/30/99
OMB 0651-0027

Page 2

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name Malcolm B. Wittenberg

Address (line 1) Crosby, Heafey, Roach & May

Address (line 2) P.O. Box 7936

Address (line 3) Four Embarcadero Center, Suite 1900

Address (line 4) San Francisco, CA 94120-7936

Correspondent Name and Address

Area Code and Telephone Number 415 543-8700

Name Malcolm B. Wittenberg

Address (line 1) P.O. Box 7936

Address (line 2) Four Embarcadero Center, Suite 1900

Address (line 3) San Francisco, CA 94120-7936

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

1

Trademark Application Number(s) or Registration Number(s)

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

☐ Mark if additional numbers attached

Trademark Application Number(s)

Registration Number(s)

| | | | | | |
|---------|---------|---------|------------------|---------|---------|
| <u></u> | <u></u> | <u></u> | <u>2,194,066</u> | <u></u> | <u></u> |
| <u></u> | <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |
| <u></u> | <u></u> | <u></u> | <u></u> | <u></u> | <u></u> |

Number of Properties

Enter the total number of properties involved.

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

40.00

Method of Payment:

Deposit Account

Enclosed ☐

Deposit Account ☒

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

03-3821

Authorization to charge additional fees:

Yes ☒

No ☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Malcolm B. Wittenberg
Name of Person Signing

[Signature]
Signature

2/10/00
Date

TRADEMARK ASSIGNMENT

This Agreement is entered into by John Dahl (Assignor), with a principal place of business at P.O. Box 10058, Newport Beach, California 92658 and iCall, Inc., a California Corporation (Assignee), with its principal place of business at One Wilshire Building, 624 South Grand Avenue, Suite 2900, Los Angeles, California 90017 (Assignee).

For good and valuable consideration, John Dahl, does hereby assign to iCall, Inc. any and all of its right, title, obligation and interest in U.S. Trademark Registration No. 2,194,066.

By:


 John Dahl

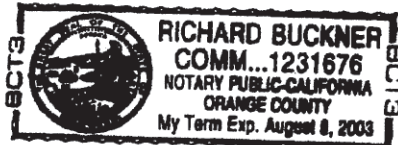
Date:

January 31, 2000

STATE OF CALIFORNIA
 COUNTY OF Orange

On January 31, 2000, before me, Richard Buckner, Notary Public, personally appeared John Dahl personally known to me OR - ~ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.




 (SIGNATURE OF NOTARY)

12181630.1

EXHIBIT C

Trademark Assignment Details

Reel/Frame: 3039 / 0886

[View Recorded Assignment](#) 

Pages: 3

Received: 09/01/2004

Recorded: 08/27/2004

Conveyance: ASSIGNS THE ENTIRE INTEREST

Total properties: 1

1 Serial #: 75098581
Mark: ICALL

Filing Dt: 05/03/1996

Reg #: 2194066

Reg. Dt: 10/06/1998

Assignors

1 ICALL HOLDINGS, LTD.

Exec Dt: 09/17/2001

Entity Type: CORPORATION

Citizenship: BERMUDA

2 ICALL LTD.

Exec Dt: 09/17/2001

Entity Type: CORPORATION

Citizenship: BERMUDA

3 ICALL LTD.

Exec Dt: 09/17/2001

Entity Type: CORPORATION

Citizenship: DELAWARE

4 ICALL LTD.

Exec Dt: 09/17/2001

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee

1 MACKEL, JOHN
10316 LORENZO DRIVE
LOS ANGELES, CALIFORNIA 90064


Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Correspondence name and address

FITZPATRICK, CELLA, HARPER & SCINTO
TILA M. DUHAME
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112-3800

Search Results as of: 09/16/2010 02:17 PM

| | |
|--|---|
| <div style="display: flex; justify-content: space-between;"> <div> <p>4/27/04</p> <p>TRANSMITTAL OF TF</p> <p>To the Director, U.S. Patent and Trademark Office</p> </div> <div> <p>09-01-2004</p>  <p>102826771</p> </div> </div> | |
| <p>1. Name of conveying party(ies): <u>iCall Holdings, Ltd.</u></p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Corporation-State <input checked="" type="checkbox"/> Other <u>Bermuda Corporation</u></p> <p>Additional name(s) of conveying party(ies) attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> | <p>2. Name of receiving party(ies): _____</p> <p>Name: <u>John Mackel</u></p> <p>Street Address: <u>10316 Lorenzo Drive</u></p> <p>City: <u>Los Angeles</u> State <u>CA</u> ZIP <u>90064</u></p> <p><input checked="" type="checkbox"/> Individual(s) citizenship <u>USA</u> <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Corporation-State <input type="checkbox"/> Other</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No (Designation must be a separate document from Assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
| <p>3. Nature of conveyance:</p> <p><input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____</p> <p>Execution Date: <u>September 17, 2001</u></p> | |
| <p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s) _____</p> <p>B. Trademark Registration No.(s) <u>2,194,066</u></p> <p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Fitzpatrick, Cella, Harper & Scinto</u></p> <p><u>30 Rockefeller Plaza</u></p> <p><u>New York, New York 10112-3800</u></p> <p>Telephone No.: <u>(212) 218-2100</u></p> <p>Facsimile No.: <u>(212) 218-2200</u></p> | <p>6. Number of applications and registrations involved: <u>1</u></p> <p>7. Total fee (37 CFR 3.41): .. \$ <u>40.00</u></p> <p><input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number <u>06-1205</u> (Attach duplicate copy of this page if paying by deposit account):</p> |
| DO NOT USE THIS SPACE | |
| <p>9. Statement and signature.</p> <p><i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i></p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div> <p><u>T. M. Duhaime</u></p> <p>Name of Person Signing</p> </div> <div> <p><u>T. M. Duhaime</u></p> <p>Signature</p> </div> <div> <p><u>Aug 26, 2004</u></p> <p>Date</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> <p>09/01/2004 BTUN11 00000009 061205 2194066</p> <p>01 FC:6521 40.00 BA</p> </div> <div> <p>Total number of pages including cover sheet, attachments, and documents: _____</p> </div> </div> | |

Form #123

NY_MAIN 448366v

ATTACHMENT TO TRADEMARK RECORDAL COVER SHEET

1. (Con't)

iCall Ltd.

Bermuda Corporation

Citizenship: Bermuda

Execution Date: September 17, 2001

iCall Ltd.

Delaware Coporation

Citizenship: Delaware

Execution Date: September 17, 2001

iCall Ltd.

California Corporation

Citizenship: California

Execution Date: September 17, 2001

TRADEMARK ASSIGNMENT

This Agreement is entered into by iCall Holdings Ltd., a Bermuda corporation, and its subsidiaries iCall Ltd., a Bermuda corporation, iCall, Inc., a Delaware corporation, and its merged predecessor iCall, Inc., a California corporation (Assignor), with its principal place of business at One Wilshire Building, 624 South Grand Avenue, Suite 2900, Los Angeles, California 90017, and John Mackel (Assignee), 10316 Lorenzo Drive, Los Angeles, CA 90064.

1. For good and valuable consideration, Assignor does hereby assign to Assignee any and all of its right, title, obligation and interest in U.S. Trademark Registration No. 2,194,066.

2. Assignee hereby accepts assignment of U.S. Trademark Registration No. 2,194,066.

iCall Holdings Ltd.

By: _____

Anthony Fischer, Director

John Mackel

STATE OF CALIFORNIA

COUNTY OF

Los Angeles

On

9/17/2001

, 2001, before me,

MUTHIAH NACHIAPPAN

personally appeared

ANTHONY

HOWARD

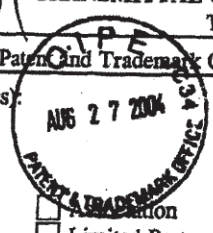

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)



EXHIBIT D

09-01-2004

| | | | |
|---|--|--|-------------------------|
| 4/27/04 TRANSMITTAL OF TI To the Director, U.S. Patent and Trademark Office  | |  102826772 | uments or copy thereof. |
| 1. Name of conveying party(ies): John Mackel <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> General Partnership <input type="checkbox"/> Corporation-State <input type="checkbox"/> Other Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | 2. Name and address of receiving party(ies): Name: <u>Arlo C. Gilbert</u> Street Address: <u>iDownload.com</u> <u>1180 Avenue of the Americas, 14th Floor</u> City: <u>New York</u> State <u>NY</u> ZIP <u>10036</u> <input checked="" type="checkbox"/> Individual(s) citizenship <u>USA</u> <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Corporation-State <input type="checkbox"/> Other If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No (Designation must be a separate document from Assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| 3. Nature of conveyance: <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other Execution Date: <u>July 30, 2004</u> | | | |
| 4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) <u>2,194,066</u> Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | |
| 5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Fitzpatrick, Cella, Harper & Scinto</u> <u>30 Rockefeller Plaza</u> <u>New York, New York 10112-3800</u> Telephone No.: <u>(212) 218-2100</u> Facsimile No.: <u>(212) 218-2200</u> | | 6. Number of applications and registrations involved: <u>1</u> 7. Total fee (37 CFR 3.41): .. \$ <u>40.00</u> <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account 8. Deposit account number <u>06-1205</u> (Attach duplicate copy of this page if paying by deposit account): | |
| DO NOT USE THIS SPACE | | | |
| 9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original documents. <u>T. M. Duhaime</u> <u>T. M. Duhaime</u> <u>Aug. 26, 2004</u> Name of Person Signing Signature Date Total number of pages including cover sheet, attachments, and documents: | | | |

Form #123

09/01/2004 09:01:11 00000000 061205 2194066

01 FC:8521

40.00 BA


NY_MAIN 448355v1

TRADEMARK ASSIGNMENT

This Agreement is entered into by John Mackel (Assignor), whose address is 10316 Lorenzo Drive, Los Angeles, CA 90064, and Arlo C. Gilbert (Assignee), whose address is IDownload.com, 1180 Avenue of the Americas, 14th Floor, New York, New York 10036.

1. For good and valuable consideration, Assignor does hereby assign to Assignee any and all of its right, title, obligation and interest in U.S. Trademark, Registration No. 2,194,066.

2. Assignee hereby accepts assignment of U.S. Trademark Registration No. 2,194,066.

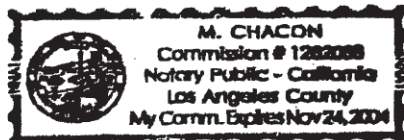

John E. Mackel, Assignor

Arlo C. Gilbert, Assignee

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On July 30, 2004, before me, M. Chacon, personally appeared John E. Mackel personally known to me – OR – (proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. WITNESS my hand and official seal.

[seal]





(Signature of Notary)

EXHIBIT E

Trademark Assignment Details

Reel/Frame: 3733 / 0748

[View Recorded Assignment](#) 

Pages: 3

Received: 03/07/2008

Recorded: 03/07/2008

Attorney Dkt #: 03735.000001

Conveyance: ASSIGNS THE ENTIRE INTEREST

Total properties: 1

1 Serial #: 75098581
Mark: ICALL

Filing Dt: 05/03/1996

Reg #: 2194066

Reg. Dt: 10/06/1998

Assignor

1 GILBERT, ARLO C.

Exec Dt: 03/07/2008

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Assignee

1 ICALL, INC.
TWO SOUNDVIEW DRIVE
GREENWICH, CONNECTICUT 06830

Entity Type: CORPORATION

Citizenship: DELAWARE

Correspondence name and address

TIMOTHY J. KELLY
30 ROCKEFELLER PLAZA, 38TH FLOOR
FITZPATRICK, CELLA, HARPER & SCINTO
NEW YORK, NY 10112

Search Results as of: 09/16/2010 02:18 PM

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

| | |
|-----------------------|--|
| SUBMISSION TYPE: | NEW ASSIGNMENT |
| NATURE OF CONVEYANCE: | ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL |

CONVEYING PARTY DATA

| Name | Formerly | Execution Date | Entity Type |
|-----------------|----------|----------------|---------------------------|
| Arlo C. Gilbert | | 03/07/2008 | INDIVIDUAL: UNITED STATES |

RECEIVING PARTY DATA

| | |
|-----------------|-----------------------|
| Name: | iCall, Inc. |
| Street Address: | Two Soundview Drive |
| City: | Greenwich |
| State/Country: | CONNECTICUT |
| Postal Code: | 06830 |
| Entity Type: | CORPORATION: DELAWARE |

PROPERTY NUMBERS Total: 1

| Property Type | Number | Word Mark |
|----------------------|---------|-----------|
| Registration Number: | 2194066 | ICALL |

CORRESPONDENCE DATA

Fax Number: (212)218-2200
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 2122182100
 Email: tkelly@fchs.com, epagan@fchs.com, docketing@fchs.com
 Correspondent Name: Timothy J. Kelly
 Address Line 1: 30 Rockefeller Plaza, 38th Floor
 Address Line 2: FITZPATRICK, CELLA, HARPER & SCINTO
 Address Line 4: New York, NEW YORK 10112

CH \$40.00 2194066

| | |
|-------------------------|------------------|
| ATTORNEY DOCKET NUMBER: | 03735.000001 |
| NAME OF SUBMITTER: | Timothy J. Kelly |
| Signature: | /tjk/ |
| Date: | 03/07/2008 |

Total Attachments: 1
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**UNITED STATES
TRADEMARK ASSIGNMENT**

WHEREAS, Arlo C. Gilbert, an individual having an address at 1180 Avenue of the Americas, 14th Floor, New York, NY 10036 (the "Assignor"), is the owner of the trademark ICALL and United States Trademark Registration No. 2,194,066 for the mark ICALL (hereinafter the "Trademark") and;

WHEREAS, iCall, Inc., a corporation organized and existing under the laws of the State of Delaware, located and doing business at Two Soundview Drive, Greenwich, CT 06830 (the "Assignee"), is desirous of acquiring all right, title and interest in and to the Trademark together with the goodwill of the business symbolized by the Trademark.

NOW, THEREFORE, in exchange for good and valuable consideration paid to Assignor by Assignee, the receipt of which is hereby acknowledged, Assignor hereby assigns to Assignee all of Assignor's right, title, and interest in and to the Trademark together with the goodwill of the business symbolized by the Trademark.

Signed at Greenwich, Connecticut this 7th day of March, 2008.

Arlo C. Gilbert

By: 

Title: Owner/Assignor

EXHIBIT F

TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

| | | | |
|--|---------------------------|----------------|---------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | NUNC PRO TUNC ASSIGNMENT | | |
| EFFECTIVE DATE: | 07/30/2004 | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| Mr. John E Mackel | | 11/24/2009 | INDIVIDUAL: UNITED STATES |
| RECEIVING PARTY DATA | | | |
| Name: | Mr. Arlo C Gilbert | | |
| Street Address: | 41 West Putnam Avenue | | |
| City: | Greenwich | | |
| State/Country: | CONNECTICUT | | |
| Postal Code: | 06830 | | |
| Entity Type: | INDIVIDUAL: UNITED STATES | | |
| PROPERTY NUMBERS Total: 1 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 2194066 | ICALL | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | (520)843-2083 | | |
| <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i> | | | |
| Phone: | 5208410835 | | |
| Email: | chas@charlescarreon.com | | |
| Correspondent Name: | Charles Carreon | | |
| Address Line 1: | 2165 S Avenida Planeta | | |
| Address Line 4: | Tucson, ARIZONA 85710 | | |
| ATTORNEY DOCKET NUMBER: | ICALL 12.10.09 | | |
| NAME OF SUBMITTER: | Charles Carreon | | |
| Signature: | /Charles Carreon/ | | |

OP \$40.00 2194066

Date:

12/10/2009

Total Attachments: 2

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NUNC PRO TUNC ASSIGNMENT OF ENTIRE INTEREST

This *nunc pro tunc* trademark assignment is made from John E. Mackel, 801 S. Grand Avenue, 10th Floor, Los Angeles, California 90017 ("Assignor") to Arlo C. Gilbert, iCall, Inc., 41 West Putnam Ave., Greenwich, Connecticut 06830 ("Assignee").

Whereas, on July 30, 2004, Assignor held all right, title, and interest in and to U.S. Trademark Registration No. 2,194,066, for the mark ICALL, which mark was registered on October 6, 1998 (the "Mark"), and which right, title and interest of Assignor included the goodwill associated with and symbolized by the Mark;

Whereas, on July 30, 2004, Assignor previously executed an assignment that assigned all of his right, title, and interest in and to the Mark to Assignee (the "2004 Assignment"), which Assignment however omitted, due to clerical error, the formal assignment of the goodwill associated with and symbolized by the Mark;

Whereas, Assignor and Assignee agree that the Assignment as originally executed was intended to convey both the Mark and the goodwill associated with and symbolized by the Mark;

Now therefore, for good and valuable consideration that is hereby acknowledged, Assignor hereby assigns, transfers and otherwise conveys to Assignee, all right, title and interest in and to the Mark, including the goodwill symbolized by and associated with the Mark, *nunc pro tunc*, effective as of July 30, 2004.

Date: 11/24/2009, 2009

Assignor:



John E. Mackel
801 S. Grand Avenue
10th Floor
Los Angeles, California 90017
Tel: 213-624-8407
Fax: 213-624-0174

Dated effective as of: _____

SUBSCRIBED and SWORN to before me
this _____ of _____, 2009

Notary Public
My Commission Expires: _____

*See attached
jurat.*

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

24th day of November, 2009 by
Date Month Year
(1) John E. Maekel
Name of Signer
proved to me on the basis of satisfactory evidence to be the person who appeared before me (1)X

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Further Description of Any Attached Document

Title or Type of Document: Nunc Pro Tunc
Assignment of Entire Interest
 Document Date: 11-24-09 Number of Pages: 1

Signer(s) Other Than Named Above: none
 RIGHT THUMBPRINT
 OF SIGNER #1
 Top of thumb here

 RIGHT THUMBPRINT
 OF SIGNER #2
 Top of thumb here

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

iCall, Inc.,

NO. C 10-02206 JW

Plaintiff,

**ORDER DENYING DEFENDANTS'
MOTION TO TRANSFER; GRANTING IN
PART AND DENYING IN PART
DEFENDANTS' MOTIONS TO DISMISS;
DENYING PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

v.

Reliance Communications Ltd., et al.,

Defendants.

I. INTRODUCTION

iCall, Inc. ("Plaintiff") brings this action against Reliance Communications, Ltd. ("RCOM") and several related Reliance companies,¹ alleging, *inter alia*, trademark infringement pursuant to the Lanham Act, 15 U.S.C. § 1125, and unfair competition under the California Business & Professions Code, Cal. Bus. & Prof. Code § 17200. Plaintiff alleges that Defendants' use of the name "Reliance iCall" on the Internet to promote voice-over Internet protocol ("VoIP") products results in consumer confusion, attracting customers by leveraging the goodwill and consumer familiarity associated with Plaintiff's iCall mark.

¹ Plaintiff also named as Defendants: Reliance Communications (U.K.) Ltd. ("RCUK"), Reliance Communications International, Inc. ("RCII"), Reliance GlobalCom Services, Inc. ("RGSI") and relianceicall.com. (hereafter, along with Defendant RCOM, are collectively referred to as "Defendants.")

Presently before the Court are (1) Defendants' Motion to Transfer Venue;² (2) Defendants RCOM and RCUK's Motion to Dismiss;³ (3) Defendants RCII and RGSI's Partial Motion to Dismiss;⁴ and (4) Plaintiff's Motion for a Preliminary Injunction.⁵ The Court conducted a hearing on September 13, 2010. Based on the papers submitted to date and oral argument, the Court GRANTS in part and DENIES in part the parties' various Motions.

II. BACKGROUND

In a Second Amended Complaint⁶ filed on June 22, 2010, Plaintiff alleges as follows:

Plaintiff is incorporated under the laws of the State of Delaware, and registered to do business in California. (SAC ¶ 5.) Defendant RCOM is incorporated under the laws of India, with its principal place of business in India. (*Id.* ¶ 6.) Defendant RCII is incorporated under the laws of the State of Delaware and is registered to do business in the State of California. (*Id.* ¶ 7.) Defendant RCUK is incorporated under the laws of the United Kingdom with its principal place of business in London. (*Id.* ¶ 8.) Defendant RGSI is incorporated under the laws of the State of Delaware and is registered to do business in the State of California. (*Id.* ¶ 9.) *In rem* Defendant relianceicall.com is an Internet domain name which is registered with VeriSign, Inc., located in Mountain View, California. (*Id.* ¶ 11.)

Plaintiff is the owner of the iCall trademark, first registered with the USPTO on October 6, 1998. (SAC ¶ 15.) Plaintiff offers VoIP services that operate on desktop computers and handheld devices through its icall.com website. (*Id.*) The iCall mark has

² (hereafter, "Motion to Transfer," Docket Item No. 30.)

³ (hereafter, "RCOM & RCUK's Motion to Dismiss," Docket Item No. 28.)

⁴ (hereafter, "RCII & RGSI's Motion to Dismiss," Docket Item No. 29.)

⁵ (hereafter, "Injunction Motion," Docket Item No. 33.)

⁶ (Second Amended Complaint for Injunctive Relief and Damages for Trademark Infringement, Trademark Dilution, Cybersquatting, and Unfair Competition, hereafter, "SAC," Docket Item No. 19.)

become popular because of its efficacy and user-friendliness, especially among iPhone users. (Id. ¶¶ 17-25.)

Plaintiff has never had any business relationship with Defendants, who go by the trade name “Reliance.” (SAC ¶ 26.) Defendants use the term “Reliance iCall” on the Internet to promote their VoIP products in competition with Plaintiff. (Id.) Defendants have also registered the domain name “relianceicall.com.” (Id. ¶ 28.) Defendants have created an inherently confusing mark, exploiting the resulting consumer confusion to attract customers by usurping the goodwill and consumer familiarity associated with Plaintiff’s iCall mark. (Id. ¶¶ 26, 28.)

On the basis of the allegations outlined above, Plaintiff alleges nine causes of action: (1) Violation of the Lanham Act § 32 (15 U.S.C. § 1114); (2) Violation of the Lanham Act § 43 (15 U.S.C. § 1125(a)); (3) Violation of the Lanham Act § 43 (15 U.S.C. § 1125(c)); (4) Violation of the Lanham Act § 43 (15 U.S.C. § 1125(d)); (5) Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*; (6) Violation of Cal. Bus. & Prof. Code § 14245; (7) Violation of Cal. Bus. & Prof. Code § 14247; (8) Violation of Cal. Bus. & Prof. Code § 14415; and (9) Declaratory Relief.

III. DISCUSSION

Presently before the Court are the parties’ various Motions. The Court addresses each Motion in turn.

A. Defendants’ Motion to Transfer Venue

Defendants move to transfer this case to the Southern District of New York pursuant to 28 U.S.C. § 1404(a), on the grounds that Defendant RCII is located there and that Plaintiff’s headquarters is based in Connecticut. (Motion to Transfer at 1.) Defendants also contend that key witnesses and evidence for both parties are located in or near New York City, whereas California lacks significant connection to the matters alleged in the Complaint. (Id.) Plaintiff contends that transfer of venue to the Southern District of New York is improper, as the suit could not have been

brought in that district for lack of personal jurisdiction over all Defendants.⁷ In addition, Plaintiff contends that transfer of venue is also improper because most of the witnesses will be located in California, where Defendants' alleged target market and Defendant RGSi is located, rather than New York. (*Id.*)

Under 28 U.S.C. § 1404(a), a district court may transfer a case pending before it to "any other district or division where it might have been brought." To support a motion for transfer, the moving party must establish: (1) that venue is proper in the transferor district; (2) that the transferee district is one where the action might have been brought; and (3) that the transfer will serve the convenience of the parties and witnesses and will promote the interests of justice. *See Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503, 506 (C.D. Cal. 1992). A plaintiff's choice of forum, however, is accorded substantial weight, and a court will not grant a motion under § 1404(a) unless the defendant makes a strong showing of inconvenience. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

Here, by moving to transfer pursuant to § 1404(a), Defendants do not dispute that this district is a proper venue. Thus, Defendants must show that the Southern District of New York is a district where the action might have been brought. The Court finds that Defendants have not shown that personal jurisdiction would be proper over all named Defendants in New York. Because Plaintiff contends that the primary market for relianceicall.com is in California,⁸ Defendants have failed to show that purposeful availment could be demonstrated for New York. Moreover, Defendants have failed to show that *in rem* jurisdiction over allegedly infringing domain name relianceicall.com would be proper in New York under the Anti-Cybersquatting Consumer Protection Act of 1999 ("ACPA"), which allows *in rem* jurisdiction over a domain name "in the judicial district in which the domain name registry, or other domain name authority that registered or assigned the domain name is located" 15 U.S.C. § 1125(d)(2)(A). Thus, the Court finds that Defendants have not

⁷ (Plaintiff's Opposition to Defendants' Motion to Transfer Venue, hereafter, "Transfer Opp'n," Docket Item No. 49.)

⁸ (Transfer Opp'n at 5.)

met their burden to show that the suit could have been brought against all Defendants in the Southern District of New York.⁹

Accordingly, the Court DENIES Defendants' Motion to Transfer Venue.

B. Defendants RCOM and RCUK's Motion to Dismiss

Defendants RCOM and RCUK move to dismiss on the grounds that (1) the Court lacks jurisdiction over them; (2) Plaintiff has failed to properly serve both Defendants; and (3) Plaintiff's Six and Eighth Causes of Action fail to state a claim. (RCOM & RCUK's Motion to Dismiss 3-12.) The Court addresses each ground in turn.

1. Lack of Personal Jurisdiction

Defendants RCOM and RCUK move to dismiss on the ground that the Court lacks personal jurisdiction over them. (RCOM & RCUK's Motion to Dismiss at 3-10.) Defendants contend that personal jurisdiction over RCOM, a company based in and incorporated under the laws of India, is improper as it does not do business, nor is it registered to do business in California. (*Id.* at 3-4.) Further, Defendants contend that RCUK, a company based in and incorporated under the laws of the United Kingdom, is also improper as the company has focused its sales of the Reliance iCall service on customers outside the United States and does not do business in California. (*Id.* at 4.) Plaintiff contends that Defendant RCOM is subject to specific personal jurisdiction in California based on its ownership of the interactive website relianceicall.com, which engages in business with residents of California.¹⁰ Moreover, RCUK is also subject to specific personal jurisdiction in California, according to Plaintiff, based on its entering into "click wrap" contracts with California residents through the relianceicall.com subscriber agreement. (*Id.* at 9-10.)

⁹ Since the § 1404(a) factors are conjunctive and Defendants have failed show that the transferee district is one where the action might have been brought, the Court need not address the third factor for convenience of the parties and witnesses. However, it is worth noting that Defendants have not made a strong showing of inconvenience. While the location of Defendant RCII may be a factor, Defendants do not identify with sufficient particularity the burden that would be imposed by litigating the action in California.

¹⁰ (Plaintiff's Opposition to the Motion to Dismiss the Second Amended Complaint at 8-10, hereafter, "Dismiss Opp'n," Docket Item No. 48.)

Motions to dismiss for lack of personal jurisdiction are brought pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. Although the defendant ordinarily files such a motion, it is the plaintiff that bears the burden of proof as to the necessary jurisdictional facts. Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1392 (9th Cir. 1984). However, the plaintiff need only make a prima facie showing that personal jurisdiction exists if the defendant files its motion to dismiss as an initial response. Data Disc, Inc. v. Systems Technology Assoc., Inc., 557 F.2d 1280, 1285 (9th Cir. 1977). To make a prima facie showing, the plaintiff need only to demonstrate facts that if true would support jurisdiction over the defendant. Data Disc, 557 F.2d at 1285. The plaintiff must make a prima facie showing as to each defendant. Rush v. Savchuk, 444 U.S. 320, 332 (1980).

When a defendant's contacts are not sufficiently systematic and continuous for a court to assert general jurisdiction, the Ninth Circuit uses the following test to evaluate a defendant's contacts for purposes of determining whether specific jurisdiction applies:

- (1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws.
- (2) The claim must be one which arises out of or results from the defendant's forum-related activities.
- (3) Exercise of jurisdiction must be reasonable.

Data Disc, 557 F.2d at 1287.

The Court considers personal jurisdiction as to each Defendant in turn.

a. Defendant RCOM

Plaintiff contends that Defendant RCOM is subject to specific personal jurisdiction based on its ownership and operation of the interactive website reliancecall.com to transact business with California citizens.¹¹ (Dismiss Opp'n at 8-10.) Defendants contend that RCOM is merely the

¹¹ Plaintiff alleges in their Second Amended Complaint that the Court has general jurisdiction over Defendants RCOM and RCUK. (SAC at 4.) The Court rejects the theory that the ownership of *quasi in rem* property within a forum state is enough to establish general personal jurisdiction over a defendant. See Shaffer v. Heitner, 433 U.S. 186, 189 (1977). The Supreme Court has held that the location of *quasi in rem* property within a forum state, in this case a domain name, does not obviate a plaintiff from its obligation to satisfy the standard minimum contacts test to establish personal jurisdiction in comportment with due process. Id.

domain name registrant and not the “owner” of the site, rather, the Reliance iCall business and its corresponding website is owned by and under the complete control of Defendant RCOM’s wholly owned subsidiary, Defendant RCII. (RCOM & RCUK’s Motion to Dismiss at 3-4.)

i. Jurisdiction Based on Interactivity of relianceicall.com

At issue is whether relianceicall.com’s interactivity is sufficient to establish specific personal jurisdiction over Defendant RCOM.

Traditionally, the operation of an interactive website has been interpreted by courts as subjecting the operator to specific jurisdiction. Compuserve, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996). The Ninth Circuit has adopted the “sliding scale” determination for specific personal jurisdiction’s “purposeful availment” prong based on availment of a forum state utilizing the Internet. The more “interactive” a defendant’s website is, the greater the “purposeful availment” of the forum state for purposes of determining specific personal jurisdiction. Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 419 (9th Cir. 1997). The focus of the “sliding scale” interactivity analysis is on the amount of data transmission possible between parties using website features and whether the website facilitated data transmissions or business transactions with residents of the forum state. Id. at 419. This sliding scale analysis is drawn from the widely-known Compuserve¹² and Bensusan¹³ model.

Here, Plaintiff alleges that relianceicall.com is clearly “interactive,” as it enables users to enter all of their information to subscribe to the online service, sends a confirmation email to complete subscription, allows payment by credit card through the site and supplies subscribers with downloadable software that they can use to make calls over the Internet. (SAC at 8-9.) Although Defendant RCOM does not dispute that it holds the registry for the domain name, Defendant RCOM contends that it is merely the parent company to the actual owner of the Reliance iCall business. Rather, it is Defendant RCII, Defendant RCOM’s wholly-owned subsidiary, who it claims has actual

¹² 89 F.3d at 1257.

¹³ Bensusan Restaurant Corp. v. King, 937 F. Supp. 295 (S.D.N.Y. 1996), aff’d, 126 F.3d 25 (2d Cir. 1997).

1 possession and control over the website. (RCOM & RCUK's Motion to Dismiss at 3-4.) In light of
2 the dispute over who is the actual operator of reliancecall.com, the Court finds that jurisdictional
3 discovery may be appropriate.

4 **ii. Jurisdiction Based on Domain Name Registry**

5 In the alternative, Plaintiff contends that the Court can assert personal jurisdiction over
6 Defendant RCOM based solely on the fact that the domain name registry of reliancecall.com is
7 physically located in this district. (Dismiss Opp'n at 8.) Specifically, Plaintiff contends that the
8 recent Ninth Circuit holding in Zuccarini establishes that domain names are property in the forum
9 state that the domain name registry is physically located and, therefore, could be used as a basis to
10 determine satisfaction of the minimum contacts test. Office Depot Inc. v. Zuccarini, 596 F.3d 696
11 (9th Cir. 2010).

12 In Zuccarini, the Ninth Circuit relied on the language of ACPA, which defined statutorily
13 that the situs of a domain name is in the district where the registry is located, to hold that the
14 location of domain names for *quasi in rem* jurisdiction under California law is also the registry's
15 district. Id. at 703. In so doing, the Zuccarini court held that "domain names are personal property
16 located wherever the registry or registrar is located." Id. at 702. Thus, domain names are located at
17 the site of their registry for *quasi in rem* jurisdiction. Id. However, the Zuccarini court specifically
18 stated that locating a domain name for the purpose of attaching *quasi in rem* jurisdiction was "a legal
19 fiction" and that the location of intangible property would necessarily vary "depending on the
20 purpose to be served" 596 F.3d at 702. In fact, "[a] single piece of intangible property may be
21 located in multiple places for some purposes." Id. This "legal fiction" would doubtfully provide the
22 level of notice required by the Due Process Clause to allow its use in proper satisfaction of the
23 minimum contacts test.

24 Thus, the Court finds that Plaintiff's reliance on Zuccarini is misplaced. Moreover,
25 Plaintiff's interpretation of Zuccarini is in conflict with the Ninth Circuit's holding in Panavision
26 that registration of a domain name and posting a website at that domain name would be insufficient
27 in itself to establish personal jurisdiction, and that it would clearly require "something more."

Panavision v. Toeppen, 141 F.3d 1316 (9th Cir. 1998). In Panavision, the Ninth Circuit affirmed the district court's finding of specific personal jurisdiction over a defendant who registered the domain name panavision.com in Illinois and then enacted a scheme to obtain \$13,000 from Panavision, a California company, for the domain name. Id. at 1318. The Ninth Circuit based its affirmation on the fact that, in addition to registration of a domain name and posting a website, the defendant had done "something more" in satisfaction of the "effects doctrine."

We agree that simply registering someone else's trademark as a domain name and posting a web site on the Internet is not sufficient to subject a party domiciled in one state to jurisdiction in another.¹⁴ As we said in Cybersell, there must be "something more" to demonstrate that the defendant directed his activity toward the forum state. Id.

Here, Plaintiff has alleged that beyond being the registered owner of the domain name relianceicall.com, Defendant RCOM has achieved the "something more" requirement through its control of the relianceicall.com website and all of its subsidiary businesses, located in California and doing business with California citizens. (Dismiss Opp'n at 8-10.) Defendants dispute that there is a greater relationship between it and Defendant RCII other than principle and subsidiary. (RCOM & RCUK's Motion to Dismiss at 3.) Moreover, Defendant RCOM disputes that it has any control or involvement with the relianceicall.com website. (Id. at 4.) Thus, the Court finds that the extensive factual disputes over relationships between affiliated companies, involvement with the Internet business and divided website ownership in this case warrant jurisdictional discovery.

Accordingly, the Court DENIES Defendants' Motion to Dismiss for Lack of Personal Jurisdiction over Defendant RCOM as premature and without prejudice. The Court GRANTS Plaintiff's request for jurisdictional discovery.¹⁵

b. Defendant RCUK

Plaintiff contends that personal jurisdiction is proper over Defendant RCUK based on Defendant's formation of "click-wrap" agreements with all of Reliance iCall subscribers prior to

¹⁴ (citing Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 419 (9th Cir. 1997)).

¹⁵ In its Opposition, Plaintiff also seeks an order excluding a prior, non-binding arbitration decision from evidence based on Federal Rules of Evidence 401, 802 and 403. (Dismiss Opp'n at 19-20.) The Court DENIES Plaintiff's request as premature.

August 19, 2010. (Dismiss Opp’n at 9-10.) Defendants contend that the identification of Defendant RCUK as the entity with which “click-wrap” agreements were formed was in error and has subsequently been corrected. (RCOM & RCUK’s Motion to Dismiss at 4.) Defendant RCUK further contends that, other than the terms of service listing, it does not offer Reliance iCall services to customers in the United States, nor does it do business in California, have offices in California, have any real property in California or have an agent registered for service in California. (*Id.*) Similar to Defendant RCOM, the Court finds that extensive factual disputes over mistaken “click-wrap” agreements and divided website ownership warrant jurisdictional discovery.

Accordingly, the Court DENIES Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction over Defendant RCUK as premature and without prejudice. The Court GRANTS Plaintiff’s request for jurisdictional discovery.

2. Lack of Service

Defendants RCOM and RCUK also move to dismiss the Second Amended Complaint on the ground that they were not personally served. (RCOM & RCUK’s Motion to Dismiss at 10-12.) Plaintiff contends that it effected service on Defendants RCOM and RCUK through Plaintiff’s service on Defendant RGSi. (Dismiss Opp’n at 14-16.)

Federal courts cannot exercise jurisdiction over a defendant without proper service of process. *Omni Capital Int’l, Ltd. v. Wolff & Co.*, 484 U.S. 97, 104 (1987). Insufficient service can result in dismissal. Fed. R. Civ. P. 12(b)(5). “Once service is challenged, plaintiff[] bear[s] the burden of establishing that service was valid under [Rule] 4.” *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).

Service on a foreign corporation may be accomplished in the manner prescribed by Federal Rule of Civil Procedure 4(e)(1) for serving an individual. Fed. R. Civ. P. 4(h)(1)(A). Rule 4(e)(1) further explains that process may be served in accordance with state law “in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). California Code of Civil Procedure, in turn, provides that process may be served on a corporation by delivering a copy of the summons and the complaint to, among others, certain corporate officers or as provided in California

Corporations Code § 2110. Cal. Civ. P. Code § 416.10(b). Finally, California Corporations Code § 2110 provides that service can be made on any “general manager in this state.” Cal. Corp. Code § 2110.

A “general manager” includes “any agent of the corporation ‘of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made.’” Gibble v. Car-Lene Research, Inc., 78 Cal. Rptr. 2d 892, 904 (Cal. Ct. App. 1998) (quoting Eclipse Fuel Engineering Co. v. Sup. Ct., 148 Cal. App. 2d 736, 745-46 (Cal. Ct. App. 1957)). Whether an entity constitutes a corporation’s “general manager” in California depends on the facts of the case. Cosper v. Smith & Wesson Arms Co., 53 Cal. 2d 77, 83 (Cal. 1959). In Cosper, for example, the California Supreme Court held that a California representative of a Massachusetts gun manufacturer constituted the manufacturer’s “general manager” for service purposes. Id. at 84. The relationship between the manufacturer and its California representative was limited to a contract for the representative to promote the sale of the manufacturer’s guns based on commission. Id. at 80. There was no formal corporate relationship, no control over employees and no assistance (other than the furnishing of advertising materials) between the two parties. Id. at 80-81. Nonetheless, the court found that this arrangement provided the out-of-state manufacturer with substantially the same business advantages it would have enjoyed if it had opened its own California office. Id. at 84.

In this case, the Court finds that Defendant RGSi is a “general manager” of Defendants RCOM and RCUK for service purposes. First, it is undisputed that Defendant RGSi is a wholly-owned subsidiary of Defendant RCOM, and that Defendant RGSi’s website prominently displays the Reliance iCall logo at issue in this case.¹⁶ Second, Plaintiff’s Complaint alleges that Defendant RGSi provides Defendant RCOM with “[sales], advertising, customer contacts, and a continuous flow of business in the State of California.” (SAC ¶ 9.) Although Defendant RGSi may not be authorized to do business on behalf of RCOM or RCUK, that level of corporate formality is not required. Rather, the question is whether the parties’ relationship makes it reasonably certain that

¹⁶ (Defendants RCOM and RCUK’s Reply Brief in Support of their Motion to Dismiss at 9, hereafter, “Reply Dismiss,” Docket Item No. 51.)

Defendants will be notified of the service.¹⁷ Here, Defendants do not deny that Defendant RGSi promptly notified Defendants RCOM and RUCK that it had been served.¹⁸ (Reply Dismiss at 9-10.)

Accordingly, the Court DENIES Defendants RCOM and RCUK's Motion to Dismiss for Lack of Service.

3. Failure to State a Claim

Defendants RCOM and RCUK move to dismiss Plaintiff's Sixth and Eighth Causes of Action on the ground that Plaintiff fails to state an actionable claim. (RCOM & RCUK's Motion to Dismiss at 12.) Defendants RCII and RGSi join in the Motion. (RCII & RGSi's Motion to Dismiss at 1-2.)

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed against a defendant for failure to state a claim upon which relief may be granted. Dismissal may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990); Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 533-34 (9th Cir. 1984). For purposes of evaluating a motion to dismiss, the court "must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party." Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987). Any existing ambiguities must be resolved in favor of the pleading. Walling v. Beverly Enters., 476 F.2d 393, 396 (9th Cir. 1973).

However, mere conclusions couched in factual allegations are not sufficient to state a cause of action. Papasan v. Allain, 478 U.S. 265, 286 (1986); see also McGlinchy v. Shell Chem. Co., 845 F.2d 802, 810 (9th Cir. 1988). The complaint must plead "enough facts to state a claim for relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the

¹⁷ See Halo Elecs., Inc. v. Bel Fuse Inc., No. C-07-06222 RMW, 2010 U.S. Dist. LEXIS 64025, at *5 (N.D. Cal. June 14, 2010).

¹⁸ See, e.g., Khachatryan v. Toyota Motor Sales, U.S.A., Inc., 578 F. Supp. 2d 1224, 1227 (C.D. Cal. 2008) (the fact that a Japanese corporation was actually put on notice as a result of service on American distributor supported finding of "general manager" status).

reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Thus, “for a complaint to survive a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). Courts may dismiss a case without leave to amend if the plaintiff is unable to cure the defect by amendment. Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000).

a. Plaintiff’s Sixth Cause of Action

Defendants move to dismiss Plaintiff’s Sixth Cause of Action for a violation of Cal. Bus. & Prof. Code § 14245 on the ground that Plaintiff does not have a California trademark. (RCOM & RCUK’s Motion to Dismiss at 12.)

Cal. Bus. & Prof. Code § 14245 prohibits use, “without the consent of the registrant, [of] any reproduction, counterfeit, copy, or colorable imitation of a mark *registered under this chapter* in connection with the sale, distribution, offering for sale, or advertising of goods or services” Cal. Bus. & Prof. Code § 14245 (emphasis added). Thus, to state a claim under this statute, a plaintiff must have registered its trademark with the State of California. Id.

Here, the parties do not dispute that Plaintiff does not have a California state trademark registration. (RCOM & RCUK’s Motion to Dismiss at 12; Dismiss Opp’n at 18.) Based on Plaintiff’s concession that it does not currently have a California trademark, the Court finds that Plaintiff does not have standing to pursue a § 14245 claim. However, Plaintiff contends that it has now submitted the iCall mark for registration with the California Secretary of State, and requests that the Court grant it leave to re-file after the registration has been obtained. (Dismiss Opp’n at 18.)

Accordingly, the Court GRANTS Defendants’ Motions to Dismiss Plaintiff’s Sixth Cause of Action with leave to amend after Plaintiff obtains its California registration.

b. Plaintiff’s Eighth Cause of Action

Defendants move to dismiss Plaintiff’s Eighth Cause of Action on the ground that Cal. Bus. & Prof. Code § 14415 does not create a private right of action. (RCOM & RCUK’s Motion to Dismiss at 12.) Plaintiff contends that Cal. Bus. & Prof. Code § 14402 and

§ 14415 together provide for the right to an injunction for trademark infringement. (Dismiss Opp’n at 18.)

Under the California Trade Name Statute, Cal. Bus. & Prof. Code §§ 14400-14416, the first entity to file articles of incorporation and use the corporate name set forth in those articles is entitled to a presumption that it has an exclusive right to use that name within California. “Section 14402, [in turn], provides for injunctive relief for violations of the rights set out in the statute.” Accuride International, Inc. v. Accuride Corp., 871 F.2d 1531, 1539-40 (9th Cir. 1989); see also Mallard Creek Industries, Inc. v. Morgan, 65 Cal. Rptr. 2d 461, 466 (Cal. Ct. App. 1997). Cal. Bus. & Prof. Code § 14415 further provides a “presumption applicable to articles of incorporation and certificates of qualification.”

Here, although improperly entitled “Violation of Cal. Bus. & Prof. Code § 14415,” Plaintiff’s Eighth Cause of Action specifically alleges that “Plaintiff is entitled to injunctive relief pursuant to California Business and Professions Code §§ [sic] 14402.” (SAC ¶ 122 (emphasis added).) Defendants do not contest that § 14402 does in fact provide a private cause of action.¹⁹

Accordingly, the Court DENIES Defendants’ Motions to Dismiss Plaintiff’s Eighth Cause of Action.

C. Plaintiff’s Motion for a Preliminary Injunction

Plaintiff moves for a preliminary injunction on the ground that Defendants’ use of the Reliance iCall mark allegedly creates customer confusion with Plaintiff’s federally-registered iCall mark. (Injunction Motion at 13.) Specifically, Plaintiff seeks an Order enjoining Defendants from: (1) using the iCall mark alone or in combination with other words; (2) using the mark Reliance iCall in an Internet domain name, or in any other medium; (3) using any representations of fact in connection with its products which are likely to cause confusion; and (4) using the iCall mark to label, identify, promote, advertise, sell or offer any products or services in interstate commerce.

¹⁹ (Reply Dismiss at 10.)

(See id., Ex. 5 at 2.) Defendants contend, among other things, that Plaintiff cannot prove likelihood of success because consumers are not confused between the parties' two marks.²⁰

A preliminary injunction is a provisional remedy, the purpose of which is to preserve the status quo and to prevent irreparable loss of rights prior to final disposition of the litigation. Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). It is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. Winter v. Natural Res. Def. Council, 129 S. Ct. 365, 375-76 (2008). A plaintiff seeking a preliminary injunction must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. Id. at 374. If a plaintiff cannot establish likelihood of success on the merits, the trial court should deny a plaintiff's motion for a preliminary injunction. Id.

To prevail on the merits of its trademark infringement action, a plaintiff must show: (1) ownership of an enforceable right in a trademark; and (2) that a defendant's use of the mark creates a likelihood of consumer confusion. Levi Strauss & Co. v. Blue Bell, Inc., 778 F.2d 1352, 1354 (9th Cir. 1985). Here, the parties do not dispute that Plaintiff registered and owns the iCall mark. The Court therefore focuses its inquiry as to whether or not Defendants' use of the Reliance iCall mark creates a likelihood of customer confusion.

In determining whether or not there is a likelihood of confusion, a court weighs the following factors: (1) similarity of the marks; (2) proximity of the goods; (3) marketing channels used; (4) the strength of the mark; (5) evidence of actual confusion; (6) type of goods and the degree of care likely to be exercised by the purchaser; (7) defendants' intent in selecting the mark; and (8) the likelihood of expansion of the product lines. See AMF Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979). In the Internet context, the first three factors are the most important in

²⁰ (Defendants' Opposition Regarding RCOM and RCUK's Motion to Dismiss the Second Amended Complaint, and RCII and RGSII Motion to Dismiss the Second Amended Complaint at 1, hereafter, "Injunction Opp'n," Docket Item No. 47.)

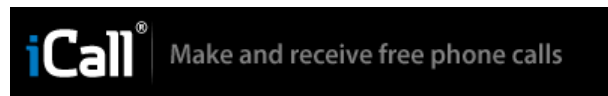
determining likelihood of confusion. Perfumbay.com Inc. v. eBay Inc., 506 F.3d 1165, 1173 (9th Cir. 2007).

1. Similarity of the Marks

At issue is whether the marks are similar.

“The similarity of the marks will always be an important factor.” Brookfield Commc’ns., Inc. v. West Coast Entertainment Corp., 174 F.3d 1036, 1054 (9th Cir. 1999). The court assesses the relevant marks as they appear in full in the marketplace, judging similarity by the marks’ appearance, sound and meaning. Id.

Here, the marks at issue appear as follows:



The Court finds that although iCall is completely incorporated into Defendants’ mark, Plaintiff has not shown sufficient similarity between the two marks to support its claim for a preliminary injunction. First, as to appearance, Plaintiff’s mark appears on one line in blue and white text, whereas Defendants’ mark appears on two lines, with a stylized “RELIANCE” displayed prominently on top in bold font, and the “iCall” term in white text only with a different font. Second, the marks also do not sound the same because the additional word “Reliance” is used in Defendants’ mark.²¹ The addition of “Reliance” also could impart a different meaning to some customers, as it is the first term in the mark.²² Thus, the Court finds that this factor does not weigh in Plaintiff’s favor.

²¹ See, e.g., Entrepreneur Media v. Smith, 279 F.3d 1135, 1145 (9th Cir. 2002) (adding “Illustrated” to “Entrepreneur” mark could create a “noticeable” difference because it made the defendant’s mark “twice as long - to the eye and the ear”).

²² See, e.g., Gruner + Jahr USA Publishing, Div. of Gruner + Jahr Printing & Publishing Co. v. Meredith Corp., 991 F.2d 1072, 1078 (2d Cir. 1993) (defendant’s “Parents Digest” mark was not sufficiently similar to plaintiff’s “Parents” mark to tip the scales towards the issuance of a preliminary injunction).

without more, is insufficient to demonstrate that this factor supports a finding of consumer confusion.”)

Here, within the Internet, it is undisputed that iCall primarily markets its products on the Apple store website, and that Defendants do not have an application for the iPhone or iPod. Plaintiff also does not dispute Defendants’ contention that the Reliance iCall service is primarily marketed to current Reliance customers through links on affiliated Reliance websites and through targeted customer communications. Thus, the Court finds that this factor does not weigh in Plaintiff’s favor.

4. The Strength of the Mark

Plaintiff contends that their iCall mark is suggestive, and has been “strengthened by such factors as extensive advertising, length of exclusive use, and public recognition.” (Injunction Motion at 18.) Defendants respond that “iCall” is a descriptive term that exists in a crowded field. (Injunction Opp’n at 8-12.)

“The strength of a mark is determined by its placement on a continuum of marks from ‘generic,’ afforded no protection; through ‘descriptive’ or ‘suggestive,’ given moderate protection; to ‘arbitrary’ or ‘fanciful,’ awarded maximum protection.” E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1291 (9th Cir. 1992) (citation omitted). If the plaintiff’s mark is weak, consumers are less likely to be confused. Id. Moreover, where a plaintiff’s mark resides in a crowded field, the mark loses some of its strength, and it is less likely that consumers will be confused. Halo Mgmt. LLC v. Interland, Inc., 308 F. Supp. 2d 1019, 1036-37 (N.D. Cal. 2003) (denying plaintiff’s motion for a preliminary injunction, and noting that plaintiff would have difficulty establishing likelihood of confusion between their “HALO” mark and defendant’s “BLUEHALO” mark because the field was crowded).

Here, Defendants have submitted documentary evidence that shows that the term iCall is in widespread use for similar goods and services, such as “iCallGlobe,” “iCall Anywhere,” and “iCall International.”²³ Thus, the Court finds that this factor does not weigh in Plaintiff’s favor.

²³ (Declaration of Rachel Hofstatter in Support of Defendants’ Opposition to Plaintiff’s Motion for a Preliminary Injunction, Ex. C, Docket Item No. 47.)

5. Evidence of Actual Confusion

Plaintiff contends, citing a metrics report, that it has actual evidence of confusion because the RelianceiCall.com website currently derives a majority of its search engine traffic from Internet visitors who are searching for the term ‘iCall.’” (Injunction Motion at 19; see also Declaration of Arlo Gilbert in Support of Plaintiff’s Motion for a Preliminary Injunction, Ex. 11, Docket Item No. 33.)

While evidence of actual confusion is not required, it “constitutes persuasive proof that future confusion is likely.” Thane Int’l, Inc. v. Trek Bicycle Corp., 305 F.3d 894, 902 (9th Cir. 2002).

Here, Defendants counter that Plaintiff’s algorithm search data report is not actual confusion evidence, as it does not show that the use of two marks has led to confusion. (Injunction Opp’n at 15.) Defendants further contend that Plaintiff has failed to present any study showing a single customer was actually confused by the two marks. Based on the parties’ conflicting contentions, the Court finds that this factor is neutral.

6. Defendants’ Intent in Selecting the Mark

Plaintiff contends that Defendants intentionally chose the Reliance iCall name to benefit from Plaintiff’s goodwill. (Injunction Motion at 18.)

“This factor favors the plaintiff where the alleged infringer adopted [its] mark with knowledge, actual or constructive, that it was another’s trademark.” Brookfield, 174 F.3d at 1059 (citation omitted). “[T]his factor is only relevant, [however], to the extent that it bears upon the likelihood that consumers will be confused by the alleged infringer’s mark.” Id. Where a defendant knowingly adopts a mark similar to another’s, the court may presume an intent to deceive. Official Airline Guides, Inc. v. Goss, 6 F.3d 1385, 1394 (9th Cir. 1993).

Here, in support of its contention, Plaintiff relies on: (1) a LinkedIn.com resume of one of Defendants’ employees, stating that the company “studied the competition” to develop the relianceicall.com website; and (2) the fact that Reliance has not registered its Reliance iCall mark in the United States. (Id.) Defendants respond that its use of the Reliance iCall mark is consistent with

its past branding activities, and that Plaintiff's contentions as to bad faith are purely speculative. (Injunction Opp'n at 17-18.) Based on such a minimal record, the Court cannot determine Defendants' intent at this time. Thus, the Court finds that this factor is neutral.

7. Likelihood of Expansion of the Product Lines

This factor is essentially irrelevant where the conflicting marks are already being used in the same market for nearly identical goods. Maxim, 654 F. Supp. 2d at 1034. Here, the parties do not dispute that nearly identical VoIP goods and services are involved. (Injunction Motion at 19; Injunction Opp'n at 2-3.) Thus, the Court finds that this factor is neutral.

In its evaluation of several of these factors, Plaintiff relies on Maxim and Perfumebay to support its contention that consumers would likely be confused. These cases are distinguishable. In Maxim, the Court found the defendant's "My-iButton" mark to be similar to the plaintiff's "iButton" mark. 654 F. Supp. 2d at 1024. This case is inapposite because the Court in Maxim found that the addition of the term "my" did not change the meaning of the mark. Id. at 1031-32. Moreover, the Court found that Maxim's mark was strong. Id. at 1033. Finally, unlike here, there was no evidence in Maxim that the term "iButton" was used extensively by others in the relevant industry. Id. Perfumebay.com is also distinguishable. 506 F.3d at 1174. The Ninth Circuit in Perfumebay.com found that the first three Sleekcraft factors weighed heavily in the plaintiff's favor. Id. at 1174-75. Here, Plaintiff has not established that its and Defendants' marks were substantially similar, nor that the parties used the same marketing channels.

On balance, the Court finds that the Sleekcraft factors do not weigh in Plaintiff's favor. However, nothing in this Order is intended to foreclose Plaintiff's ability to prove likelihood of confusion at a later stage of the litigation.

Accordingly, the Court DENIES Plaintiff's Motion for a Preliminary Injunction.

IV. CONCLUSION

The Court GRANTS in part and DENIES in part the parties' various Motions as follows:

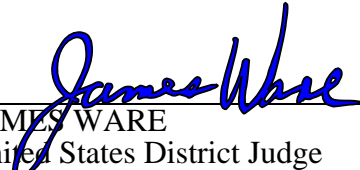
- (1) Defendants' Motion to Transfer is DENIED;

- (2) Defendants RCOM and RCUK's Motion to Dismiss is GRANTED in part and DENIED in part as follows:
- (a) Motion to Dismiss for Lack of Personal Jurisdiction is DENIED without prejudice;
 - (b) Motion to Dismiss for Lack of Service is DENIED;
 - (c) Motion to Dismiss Plaintiff's Sixth Cause of Action is GRANTED with leave to amend; and
 - (d) Motion to Dismiss Plaintiff's Eighth Cause of Action is DENIED.
- (3) Plaintiff's Motion for a Preliminary Injunction is DENIED.

The Court GRANTS Plaintiff jurisdictional discovery as to Defendants RCOM and RCUK and sets the following schedule:

- (1) The parties shall complete jurisdictional discovery on or before **December 3, 2010**.
- (2) Once jurisdictional discovery is completed, the parties shall appear for an Interim Case Management Conference on **December 13, 2010 at 10 a.m.**
- (3) On or before **December 3, 2010**, the parties shall file a Joint Case Management Conference Statement. The Statement shall include, among other things, undisputed facts defining the relationships between and among the various entities named as Defendants in the Complaint, and their ownership, control and operation of the relianceicall.com domain name, the relianceicall.com website (including creation, maintenance and ownership of files), the server on which relianceicall.com is housed, the Reliance iCall software, any telecommunications networks used in the Reliance iCall business and the Reliance iCall business itself.

Dated: September 16, 2010


JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Charles Carreon chas@charlescarreon.com
Dylan Ruga druga@steptoe.com
Michael Richard Heimbold mheimbold@steptoe.com
Michael Allan mallan@steptoe.com
Rachel M. Hofstatter rfofstatter@steptoe.com

Dated: September 16, 2010

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

EXHIBIT H

Apple Trademark List

The following is a list of Apple's trademarks and service marks.

When using the marks in publications that will be distributed only in the United States, include the appropriate TM, SM, or ® symbol on first use. For publications that will be distributed outside the United States, do not include trademark symbols. Instead use the appropriate trademark attribution notice, for example: Mac and Mac OS are trademarks of Apple Inc., registered in the U.S. and other countries.

The list also includes one or more suggested generic terms for each trademark. For all publications, include an appropriate generic term after the trademark the first time it appears. Thereafter, the generic term should appear frequently with the trademark. (Note: These generic terms are only suggestions, and there may be other words that are equally appropriate.)

Remember that trademarks are adjectives, and cannot be made plural or possessive.

For more information on how to use Apple's trademarks, refer to the document titled, "Guidelines for Using Apple Trademarks," or contact the Trademark team.

The absence of a product or service name or logo from this list does not constitute a waiver of Apple's trademark or other intellectual property rights concerning that name or logo.

| APPLE'S TRADEMARKS | GENERIC TERM(S) |
|-----------------------|--|
| AirDrop™ | software feature |
| AirMac® | wireless hardware/software solution |
| AirPlay® | software feature |
| AirPort® | wireless hardware/software solution |
| AirPort Express® | wireless hardware/software solution |
| AirPort Extreme® | wireless hardware/software solution |
| AirPrint™ | software feature |
| AirTunes® | application program |
| A.Pack® | software feature |
| Aperture® | application program |
| Apple® | computers, computer software, computer peripherals, etc. |
| Apple logo® | |
| Apple Cinema Display® | computer monitor |
| AppleLink™ | communication network/computer software |
| Apple Media Series™ | training materials |
| Apple Remote Desktop™ | remote desktop software |
| AppleScript® | application program |
| AppleScript Studio® | development software |
| AppleShare® | server software |
| Apple Studio Display™ | computer monitor |
| AppleTalk® | network system |
| Apple TV® | digital media extender |
| AppleVision™ | computer display |
| AppleWorks® | application program |
| Aqua® | user interface |
| Audio Units logo™ | |
| Back to My Mac® | software feature |
| Bonjour® | networking technology |
| Bonjour logo® | |

Legal Information

End User Software License Agreements

Hardware Warranties

Privacy Policy

iTunes Store Terms

Sales Policies

Apple Global Online Support site (AGOS)
 Apple Online Store
 Apple Online Store for K12 Schools
 Apple Online Store for Higher Education
 Retail Store
 Apple Online Store for Education Individuals
 Apple Authorized U.S. Reseller

Service Products

AppleCare Protection Plan for 1:1 Learning Solutions (PDF)
 AppleCare Service Plan
 AppleCare Protection Plan
 AppleCare Protection Plan for iPhone
 AppleCare Protection Plan for iPad
 AppleCare Repair Agreement
 AppleCare Parts Agreement
 Bomgar Remote Support Software
 AppleCare Latin America Extended Service Agreement
 AppleCare Premium Service and Support Plan Terms and Conditions
 AppleCare Technical Support Services Terms and Conditions
 Remote Access Technical Assistance Terms and Conditions
 AppleCare+ for iPhone
 AppleCare+ for iPad

Terms of Service

Web Site Terms and Conditions of Use
 Apple Print Services Terms of Use
 Apple Print Services Sales Policies & Ordering Information
 iCloud Terms of Service
 One to One Terms and Conditions
 iChat Account Terms of Service
 iTunes Store Terms of Service
 iTunes Store Gift Certificates and Allowances Terms and Conditions
 iTunes Store Terms of Sale
 Apple Support Communities Terms of Use
 Repair Terms and Conditions
 Retail Store Service
 General Service
 Express Replacement Service for iPhone
 In Warranty Terms and Conditions
 Out of Warranty Terms and Conditions
 Training Service Terms and Conditions

Policies

Unsolicited Idea Submission Policy
 Privacy Policy

Trademark, Copyright and Intellectual Property

Trademark List

Copyright
 Apple Web Badges
 Piracy Prevention
 Guidelines for Trademarks and Copyrights
 FileMaker Legal Information
 NeXT Trademark List

Training and Certification Agreements and Policies

Legal Contacts

Export Compliance

Supplier Provisions

| | |
|---------------------------|-------------------------------|
| Boot Camp® | application program |
| Carbon® | software technology |
| Charcoal® | computer font |
| Chicago® | computer font |
| Cinema Tools™ | application program |
| Claris® | software |
| Cocoa® | software technology |
| Cocoa Touch® | software technology |
| ColorSync® | application program |
| ColorSync logo® | |
| Cover Flow® | application program |
| Dashcode® | developer software |
| DVD@CCESS™ | software feature |
| DVD Studio Pro® | application program |
| Educator Advantage™ | marketing program |
| eMac® | computer |
| EtherTalk™ | interface card/network |
| Exposé® | computer software |
| FaceTime® | video calling |
| FairPlay® | software technology |
| FileVault® | application program |
| Final Cut® | application program |
| Final Cut Pro® | application program |
| Final Cut Studio® | application program |
| Finder® | operating system software |
| FireWire® | serial bus |
| FireWire compliance logo™ | |
| FireWire logo™ | |
| FireWire symbol® | |
| FlyOver™ | software feature |
| FontSync® | application program |
| GarageBand® | application program |
| Geneva® | computer font |
| Guided Access™ | operating system feature |
| HyperCard® | application program |
| HyperTalk™ | application program |
| iBook® | computer |
| iBooks® | application program |
| iCal® | application program |
| iChat® | application program |
| iDVD® | application program |
| iFrame Logo™ | video format |
| iLife® | suite of application programs |
| iMac® | computer |
| ImageWriter® | printer |
| iMessage™ | software feature |
| iMovie® | application program |
| Inkwell® | application program |

| | |
|---------------------------|---|
| Instruments® | developer software |
| iPad® | mobile digital device |
| iPhone® | mobile digital device |
| iPhoto® | application program |
| iPod® | mobile digital device |
| iPod classic® | mobile digital device |
| iPod Hi-Fi® | speakers |
| iPod nano® | mobile digital device |
| iPod shuffle® | mobile digital device |
| iPod Socks® | holder for computer hardware and consumer electronics |
| iPod touch® | mobile digital device |
| iSight® | camera |
| iTunes® | application program |
| iTunes Logo® | application program |
| iTunes Pass® | online store |
| iTunes U® | feature of online store |
| iWeb™ | application program |
| iWork® | suite of application programs |
| Jam Pack® | computer software |
| Keychain® | operating system feature |
| Keynote® | application program |
| LaserWriter™ | printer |
| Launchpad™ | operating system features |
| LiveType® | application program |
| LocalTalk™ | computer cable system/network |
| Logic® | application program |
| Logic Studio® | application program |
| Mac® | computer |
| Mac logo® | |
| MacApp® | application program |
| MacBook® | computer |
| MacBook Air® | computer |
| MacDNS® | application program |
| Macintosh® | computer |
| Macintosh Products Guide® | online catalog |
| Mac OS® | operating system software |
| Mac Pro® | computer |
| MacTCP® | application program |
| Made for iPad logo™ | |
| Made for iPhone logo™ | |
| Made for iPod logo® | |
| MagSafe® | power adapters |
| MainStage® | application program |
| Mission Control™ | operating system feature |
| Monaco® | computer font |
| Multi-Touch™ | touchscreen interface |
| NetInfo™ | computer software |
| Newton™ | operating system software |

| | |
|--------------------------|--|
| New York® | computer font |
| Numbers® | application program |
| Objective-C® | computer software |
| OfflineRT™ | software feature |
| Open Directory logo™ | |
| OpenCL™ | software technology |
| OpenPlay® | application program |
| OS X® | operating system software |
| Pages® | application program |
| Passbook® | application program |
| Photo Booth® | application program |
| Photocasting™ | digital content delivery service |
| Pixlet® | compression application program |
| Podcast Logo® | application feature |
| PowerBook® | computer |
| Power Mac® | computer |
| ProDOS™ | operating system software |
| Quartz® | graphics and display technology |
| QuickDraw® | application program |
| QuickTime® | application program |
| QuickTime Broadcaster™ | application program |
| QuickTime logo® | |
| Retina™ | display |
| Rosetta® | application program |
| Safari® | application program |
| Sand® | computer font |
| Shake® | application program |
| Sherlock® | application program |
| Siri® | voice recognition software |
| Skia™ | computer font |
| Smart Cover® | protective cover and stand |
| SnapBack™ | application feature |
| Soundtrack® | application program |
| Spaces® | operating system feature |
| Spotlight® | software utility |
| StyleWriter™ | printer |
| SuperDrive® | computer media device |
| Textile® | computer font |
| There's an app for that® | slogan |
| Think different® | slogan |
| Time Capsule® | wireless hard drive/Wi-Fi base station |
| Time Machine® | application program |
| TrueType® | font technology |
| Tubes® | cases for computer hardware and consumer electronics |
| Ultrabeat® | software feature |
| Velocity Engine™ | vector processing unit |
| WaveBurner® | application program |
| WebObjects® | software |

| | |
|-------------------------|---------------------|
| WebScript™ | computer software |
| Works with iMovie logo™ | |
| Works with iPhone logo® | |
| Xcode® | developer software |
| Xgrid® | application program |
| Xsan® | application program |
| Xserve® | server |

| APPLE'S SERVICE MARKS | GENERIC TERM(S) |
|--|------------------------------|
| A Comprehensive Study of Final Cut Pro™ | training course |
| A Comprehensive Study of iLife™ | training course |
| A Comprehensive Study of Motion™ | training course |
| ACOT™ (Apple Classrooms of Tomorrow) | education services |
| ACOT2™ | education services |
| ACTC Boot Camp™ | training course |
| Administering Final Cut Server™ | training course |
| Advanced Editing Techniques in Final Cut Pro™ | training course |
| Advanced Techniques in Logic Pro™ | training course |
| An Introduction to Administering Final Cut Server™ | training course |
| An Introduction to Aperture™ | training course |
| An Introduction to Color™ | training course |
| An Introduction to Color Correction in Final Cut Studio™ | training course |
| An Introduction to DVD Studio Pro™ | training course |
| An Introduction to Final Cut Pro™ | training course |
| An Introduction to Final Cut Pro, Prime Time™ | training course |
| An Introduction to Final Cut Express™ | training course |
| An Introduction to GarageBand™ | training course |
| An Introduction to iLife™ | training course |
| An Introduction to iWork™ | training course |
| An Introduction to Logic Express and Logic Pro™ | training course |
| An Introduction to Motion™ | training course |
| An Introduction to Sound Editing in Final Cut Studio™ | training course |
| An Introduction to Soundtrack Pro™ | training course |
| An Overview of Final Cut Pro™ | training course |
| An Overview of Final Cut Server™ | training course |
| App Store™ | online store |
| Apple® | various services |
| AppleCare® | service and support programs |
| Apple Certified Trainer™ | certification services |
| Apple Consultants Network™ | consultant services |
| Apple Desktop Service Certification™ | training course |
| Apple Desktop Service Lab™ | training course |
| Apple Portable Service Certification™ | training course |
| Apple Portable Service Lab™ | training course |
| Apple Store® | retail store services |
| Briefing Room™ | feature of retail store |
| Complete My Album® | feature of online store |
| Final Cut Pro Advanced Editing™ | training course |

| | |
|--|--------------------------------------|
| Genius® | customized recommendations |
| Genius Bar® | service and support program |
| Genius Bar logo® | service and support program |
| iAd® | mobile advertising platform |
| iBookstore™ | online store |
| iCloud® | online service |
| iDisk® | online services |
| Introduction to Mac OS X™ | training course |
| iMix® | feature of online store |
| Indie Spotlight™ | feature of online store |
| The iTunes Download® | radio show, podcast |
| iTunes Extras® | online store |
| iTunes LP™ | online store |
| iTunes Match™ | online service |
| iTunes Music Store® | online music store |
| iTunes Plus® | feature of online store |
| iTunes Live® | online store, entertainment services |
| iTunes Store® | online store |
| Joint Venture® | retail service |
| Lion 101 – OS X Support Essentials 10.7 | training class |
| Lion 201 – OS X Server Essentials 10.7 | training class |
| .Mac® | online services |
| Mac.com® | Email service |
| Mac Integration Basics 10.7™ | training course |
| Mac OS X Advanced Administration™ | training course |
| Mac OS X Deployment™ | training course |
| Mac OS X Directory Services™ | training course |
| Mac OS X Security & Mobility™ | training course |
| Mac OS X Server Essentials™ | training course |
| Mac OS X Support Essentials™ | training course |
| MobileMe® | online services |
| Motion Graphics and Effects in Final Cut Studio™ | training course |
| onetoone® | service and support program |
| ProCare® | service and support program |
| Shop different™ | slogan |
| Vingle® | feature of online store |
| Xsan 2 Administration™ | training course |

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